A **RANJAN PARAMALINGAM & ANOR v. PERSATUAN PENDUDUK TAMAN BANGSAR & ANOR**

COURT OF APPEAL, PUTRAJAYA
AZIZAH NAWAWI JCA
S NANTHA BALAN JCA
B LIM CHONG FONG JCA
[CIVIL APPEAL NO: W-01(IM) 37-01-2022]
7 FEBRUARY 2023

C **Abstract** – *For a party to intervene in judicial review proceedings, that party must establish that its interest is directly affected by the decision under review. The question of whether the proposed intervener is directly affected by the judicial review is fact-sensitive. It is incumbent upon the court to scrutinise the facts carefully and to keep in mind that all parties* D *who may be directly affected must be allowed to intervene and participate in the judicial review so that they can be heard in opposition to the views being advanced by the protagonist of the judicial review.*

E ***CIVIL PROCEDURE:*** *Intervention – Appeal – Application to intervene in judicial review proceedings – Application dismissed by High Court – Implementation of gated and guarded neighbourhood scheme – Judicial review to quash city council's decision in disapproval for scheme and to compel city council to grant permission/approval for scheme – Applicants owner/tenant of house in neighbourhood – Whether applicants 'directly affected' by judicial review – Whether applicants 'proper persons' to be heard in opposition to judicial review – Whether interests* F *directly affected by decision under review – Whether applicants ought to be allowed to intervene in judicial review proceedings – Rules of Court 2012, O. 53 rr. 4(2), 8(1)*

G This was an appeal by the appellants against the decision of the High Court Judge ('HCJ') which dismissed the appellants' application ('encl. 30') made pursuant to O. 53 r. 4(2) and r. 8(1) of the Rules of Court 2012 ('ROC') to intervene in a judicial review application ('JR 198'). The parties in JR 198 were the first appellant ('Association'), as the first applicant, and the second appellant ('DBKL'), as the respondent. JR 198 related to the gated and guarded neighbourhood scheme ('G&G Scheme') which was implemented by H the Association over part of a residential neighbourhood known as Bangsar Park. The purpose of JR 198 was to quash DBKL's decision in declining to give approval for the G&G Scheme and consequently, for an order of *mandamus* to compel DBKL to grant permission/approval for the G&G Scheme. The first appellant was the owner of a house that faced Jalan Limau I Manis, which was part of Bangsar Park. The second appellant was the tenant

of the house. While the front of the house was not within the territorial boundary of the G&G Scheme, the side road and back-lane to the house were squarely within the G&G Scheme. Thus, access to the side road and back-lane to the house would be subjected to compliance with the security protocols that were put in place under the G&G Scheme. The appellants opposed the G&G Scheme and took the position that the Association had no right to implement the G&G Scheme and to obstruct and/or hinder their access to the side road or the back-lane or to restrict access to all those public roads within Bangsar Park which fell within the G&G Scheme. In line with their vehement objection to the G&G Scheme, the appellants had previously filed an action against the Association in the High Court, for causes of action in nuisance and contravention of the Personal Data Protection Act 2010 and for allegedly running an illegal G&G Scheme ('Suit 152'). The Association added DBKL as a third party to Suit 152. Suit 152 was dismissed by the High Court and the decision was upheld by the Court of Appeal. The matter is presently pending hearing of the substantive appeal in the Federal Court in respect of the question for which leave was granted. It was against the backdrop of Suit 152 that the appellants filed JR 198. The HCJ in JR 198 dismissed encl. 30 essentially because Suit 152 was dismissed. The main issue in this appeal was whether the appellants were 'directly affected' by JR 198, per O. 53 r. 4(2) of the ROC and/or whether the appellants were 'proper persons' to be heard in opposition to JR 198, per O. 53 r. 8(1) of the ROC.

Held (allowing appeal)
Per S Nantha Balan JCA delivering the judgment of the court:

(1) There was a misdirection on the part of the HCJ in dismissing encl. 30 just because Suit 152 was dismissed. Enclosure 30 was not devoid of merit merely because of the outcome of Suit 152. For a party to intervene in judicial review proceedings, the interested party must establish that their interest is directly affected by the decision under review. In order to be a 'proper person' to be heard in opposition to the judicial review, that party must satisfy the court that they are directly affected by the judicial review. Since part of the house (side road and back-lane) was subject to the G&G Scheme (with all its strictures and security protocols, *etc*), which was the subject matter of JR 198, any decision on the G&G Scheme which favours the Association would invariably affect the appellants who would be compelled to abide by the rules of the G&G Scheme if they wish to gain access to the side road and back-lane of the house. (paras 73, 74 & 82)

(2) Since the Association had themselves wrapped their O. 53 statement around the allegations that were made in Suit 152, there was a causal connection or inter-relationship between Suit 152 and JR 198, which

could not be surgically separated to the point where it could be said rather artificially that the appellants were not directly affected by JR 198. The circumstances here were such that the appellants had no choice but to intervene in JR 198. They had asked that the papers be served on them but the Association refused. If the appellants had decided not to intervene in JR 198, the respondents would surely be entitled to say that by their inaction, the appellants had 'acquiesced' to JR 198 and was 'estopped' from taking a stand contrary to the outcome in JR 198. The court made an order that the appellants be allowed to intervene in the proceedings in JR 198 and be joined as respondents. (paras 75, 80, 81 & 83)

Case(s) referred to:

Advance Synergy Capital Sdn Bhd v. The Minister Of Finance, Malaysia & Anor [2011] 7 CLJ 557 CA ***(refd)***

Chin Chee Kow v. Peguam Negara Malaysia; So Miau Song & Ors (Intervener) [2018] 1 LNS 94 HC ***(refd)***

Dr Dzul Khaini Hj Husain & Ors v. Director Of Lands And Mines Office (Kuala Lumpur) & Anor; Mass Rapid Transit Corporation Sdn Bhd (Proposed Intervener) [2016] 9 CLJ 836 HC ***(refd)***

Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors [2009] 6 CLJ 405 FC ***(refd)***

Mentari Housing Development Sdn Bhd & Anor v. Abdul Ghapor Hussin & Ors [2012] 2 CLJ 199 CA ***(refd)***

Nana Ofori Atta II v. Nana Abu Bonsra II [1958] AC 95 ***(refd)***

Ottavio Quattrocchi v. Menteri Dalam Negeri Malaysia & Ors [2001] 4 CLJ 778 HC ***(refd)***

Persatuan Penduduk Taman Bangsar v. Datuk Bandar Kuala Lumpur; Ranjan Paramalingam & Anor (Proposed Interveners) [2022] 1 LNS 716 HC ***(refd)***

Ramachandram Appalanaidu & Ors v. Gasing Meridian Sdn Bhd [2018] 8 CLJ 48 CA ***(refd)***

Ranjan Paramalingam & Anor v. Bangsar Park Residents Association; Dewan Bandaraya Kuala Lumpur & Anor (Third Parties) [2021] 1 LNS 403 HC ***(refd)***

Ranjan Paramalingam & Anor v. Persatuan Penduduk Taman Bangsar Kuala Lumpur [2023] 1 LNS 30 CA ***(refd)***

Semantan Estate (1952) Sdn Bhd v. Kerajaan Malaysia & Ors [2019] 1 LNS 1557 HC ***(refd)***

Tenaga Nasional Bhd v. Suruhanjaya Tenaga & Anor [2017] 1 LNS 902 HC ***(refd)***

Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1989] 1 CLJ 1128; [1989] 2 CLJ (Rep) 575 HC ***(refd)***

Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC ***(refd)***

Tradium Sdn Bhd v. Zain Azahari Zainal Abidin & Anor [1996] 2 CLJ 270 CA ***(refd)***

Wahi Saidin & Ors v. Yang Dipertua Majlis Perbandaran Kulim & Ors [2013] 5 CLJ 548 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 96(a)

Extradition Act 1992, s. 12

Rules of Court 2012, O. 15 r. 6(2)(b)(i), (ii), O. 53 rr. 3(1), (2), 4(2), 8(1)

Rules of the High Court 1980, O. 15 r. 6(2)(b), O. 53 rr. 4(2), 8(1)

Other source(s) referred to:

The Law And Practice Of Judicial Review In Malaysia, 2020, CLJ Publication, pp 639-642

For the appellants - Bastian Vendargon & Anne Vendargon; M/s Bastian Vendargon
For the 1st respondent - Fahri Azzat; M/s Fahri, Azzat & Co
For the 2nd respondent - Nur Illahi Mohd Nasir; M/s Chung, Huang & Khalid

[Editor's note: For the High Court judgment, please see Persatuan Penduduk Taman Bangsar v. Datuk Bandar Kuala Lumpur; Ranjan Paramalingam & Anor (Proposed Interveners) [2022] 1 LNS 716 (overruled).]

Reported by Lina E

JUDGMENT

S Nantha Balan JCA:

Introduction

[1] This is an appeal by Mr Ranjan Paramalingam ('Ranjan') and Mr Jude Micory Lobijin ('Jude') (collectively, 'the appellants') against the decision of the learned judge of the High Court ('the judge') dated 21 December 2021, which dismissed the appellants' application (per encl. 30) made pursuant to O. 53 r. 4(2) and r. 8(1) of the Rules of Court 2012 ('ROC') to intervene in Kuala Lumpur High Court application for Judicial Review No. WA-25-198-07/2020 ('JR 198').

[2] The parties in JR 198 are Persatuan Penduduk Taman Bangsar (Bangsar Park Residents' Association) ('the Association') as the applicant and Datuk Bandar Kuala Lumpur ('DBKL') as the respondent.

[3] The parties to the present appeal are the Association and DBKL as the first and second respondents respectively.

JR 198

[4] JR 198 relates to the gated and guarded neighbourhood scheme ('G&G scheme') which was implemented by the Association over part of a residential neighbourhood known as Bangsar Park, specifically along Jalan Limau Nipis, Jalan Limau Kasturi, Lorong Limau Kasturi and Lorong Limau Manis 2. The purpose of JR 198 was essentially to quash DBKL's decision rendered *via* their letter dated 22 June 2020, wherein they declined to give approval for the G&G scheme, and consequently for an order of *mandamus* to compel DBKL to grant permission/approval for the G&G scheme.

Ranjan And Jude

[5] Ranjan is the owner of property at No. 79, Jalan Limau Manis, Bangsar Park, 59000 Kuala Lumpur ('the house'). Jude is the tenant of the house. The front of the house faces Jalan Limau Manis. The Association

maintains that the house is outside the G&G scheme. Whilst it is true that the front of the house is not within the territorial boundary of the G&G scheme, the side road and back-lane to the house are however, squarely within the G&G scheme. Thus, access to the side road and back-lane to the house would be subject to compliance with the security protocols that were put in place under the G&G scheme. In so far as the appellants are concerned, they were at all times opposed to the G&G scheme. The appellants take the position that the Association has no right to implement the G&G scheme and have no right to obstruct and/or hinder their access to the side road or the back-lane or indeed to restrict access to all those public roads within Bangsar Park which fall within the G&G scheme.

Suit 152

[6] In line with their vehement objection to the G&G scheme, the appellants had previously filed an action on 22 March 2017, *to wit*, Kuala Lumpur High Court Civil Suit No: WA-22NCvC-152-03/2017 ('Suit 152') against the Association, for causes of action in nuisance and contravention of the Personal Data Protection Act 2010 and for allegedly running an illegal G&G scheme. DBKL was not named as a defendant in Suit 152. However, the Association added DBKL as a third party to Suit 152.

[7] The appellants applied to intervene in JR 198 claiming that they are directly affected by JR 198 and/or that they are proper persons to be heard in opposition to JR 198. However, before encl. 30 could be heard, the High Court had delivered its decision in Suit 152 after full trial. On 26 January 2021, the High Court dismissed Suit 152. The High Court's decision in Suit 152 is reported as *Ranjan Paramalingam & Anor v. Bangsar Park Residents Association; Dewan Bandaraya Kuala Lumpur & Anor (Third Parties)* [2021] 1 LNS 403 (HC).

[8] Ranjan and Judge appealed to the Court of Appeal against the dismissal of Suit 152. On 28 June 2022, the appeal by Ranjan and Jude was dismissed by the Court of Appeal. The decision of the Court of Appeal is reported as *Ranjan Paramalingam & Anor v. Persatuan Penduduk Taman Bangsar Kuala Lumpur* [2023] 1 LNS 30; [2023] 1 MLJ 459 (CA).

[9] Ranjan and Jude decided to take it further to the Federal Court. (See: Federal Court Civil Application No. 08(f)-357-07/2022). By an order of the Federal Court dated 24 November 2022, leave was granted under s. 96(a) Courts of Judicature Act 1964 (Revised 1972) (Act 91) permitting Ranjan and Jude to appeal to the Federal Court in respect of the following questions of law:

Question 1

Whether gated and guarded community schemes operated by residents' Associations over public areas, including roads and facilities, without positive legislative provisions permitting such schemes, are illegal and

unconstitutional in light of the decision of the Federal Court in *Menteri Hal Ehwal Dalam Negeri & Ors v. Kerajaan Negeri Pulau Pinang* [2020] 2 CLJ 53?

(The answer sought by the Applicants is 'yes')

Question 2

Whether residents' Associations and their agents are forbidden by personal data law and identity card legislation from collecting the personal data of people entering public roads and areas covered by their gated and guarded schemes?

(The answer sought by the Applicants is 'yes')

Question 3

Can a residents' Association rely on a defence of lawful authority to defeat a Plaintiffs' claim against it in, *inter alia*, nuisance and breach of personal data laws when "approvals" by a Local Authority have lapsed and/or been refused?

(The answer sought by the Applicants is 'no')

Question 4

When a Plaintiff appeals against dismissal of his action against the Defendant, is it imperative for the Plaintiff to also appeal against the dismissal of the third-party proceedings between the Defendant and Third Party in that action when the Plaintiff has not sought any relief against the said Third Party?

(The answer sought by the Applicants is 'no')

[10] Thus, arising out of the leave that was granted in favour of Ranjan and Jude, there is now pending in the Federal Court a substantive appeal, namely, Federal Court Civil Appeal No. 02(f)-104-12/2022(W) which has yet to be heard.

Order 53 – Intervention

[11] Having briefly touched on the related proceedings, we come back to the present appeal. The main issue in this appeal is whether the appellants are "directly affected" by JR 198 per O. 53 r. 4(2) of the ROC, and/or whether the appellants are "proper persons" to be heard in opposition to JR 198 per O. 53 r. 8(1) of the ROC. These procedural provisions in O. 53 ROC read as follows:

Order 53

4. Notice (O. 53 r. 4)

(1) Where leave has been granted under this rule, the applicant shall, within fourteen days after the grant of such leave, file a notice in Form 110.

A (2) Upon extraction of the sealed copy of Form 110, **the applicant shall serve a copy of the same together with a copy of the statement and all affidavits in support on all persons directly affected by the application** not later than fourteen days before the date of hearing specified in the Form 110.

B ...

8. Other persons who may be heard (O. 53 r. 8)

(1) Upon the hearing of an application for judicial review, **any person who desires to be heard in opposition to the application and appears to the judge to be a proper person to be heard may be heard** notwithstanding C that he has not been served with the cause papers in the matter.

(2) Where on application for judicial review an order of *certiorari* is made in any such case, the order shall direct that the proceedings shall be quashed forthwith on their removal to the High Court.

(emphasis added)

D

Enclosure 30 – Outcome

[12] On 21 December 2021, the judge rejected the appellants' application to intervene (encl. 30) and dismissed it with costs. The decision of the High Court is reported as *Persatuan Penduduk Taman Bangsar v. Datuk Bandar Kuala* E *Lumpur; Ranjan Paramalingam & Anor (Proposed Interveners)* [2022] 1 LNS 716 (HC). Pursuant to an application by the appellants herein (per encl. 66), the High Court (per order dated 26 April 2022) granted a stay of the JR 198 pending disposal of the present appeal.

[13] The appeal came before us on 7 February 2023, whereupon after F having read the record of appeal and the written submissions and having heard counsel, we unanimously allowed the appeal and set aside the judge's said decision. We also made a consequential order and granted order in terms of encl. 30 with costs in the cause. Our reasons for allowing the appeal now follow.

G

Suit 152 – The Complaints

[14] The obvious starting point for purposes of establishing the relevant background facts is Suit 152. As mentioned earlier, Suit 152 was filed on 22 March 2017. In Suit 152, Ranjan and Jude pleaded that on or about H 2 January 2017, the Association set up permanent locked and unmanned barriers on various public streets within a part of Bangsar Park so as to form an illegal G&G scheme. These barriers have allegedly excluded various forms of vehicular traffic, pedestrians and even animals from having the right to access, and of passage, on public roads in Bangsar Park.

I **[15]** It is alleged that these barriers posed a danger to the public, particularly in conditions of bad weather, heavy traffic, illegal parking and at night, when the barriers are not lighted or not sufficiently lighted, and in the absence of, or insufficient, warning signs.

[16] Apart from the grievances regarding the barriers, Ranjan and Jude also took umbrage with the security checkpoint which had been installed by the Association. The appellants are displeased with what has been described as "interrogation" by the security guards who were engaged by the Association, on persons entering the area concerned and the surveillance through the cameras installed at the guard post. The appellants contend that the Association had wrongfully set up permanent locked and unmanned barriers on various public streets in Bangsar Park so as to form an illegal gated and guarded area.

[17] In addition, there is a checkpoint complete with a shed on the footway and the boom gate across the main street to the neighbourhood, which is well-guarded by the Association's security guard and also equipped with a closed-circuit television ('CCTV'). The security guard was given the right and discretion to stop, inspect, interrogate and ask for personal information about any individual who wanted to pass the checkpoint. The acts by the security guards in inspecting and making copies of identity cards and other identification documents of the people they interrogate, by which personal details are revealed, is said to be a breach of the Personal Data Protection Act 2010 (Act 709).

Suit 152 – Relief

[18] In Suit 152, Ranjan and Jude sought the following reliefs:

(a) a declaration that the Association had operated an illegal security business within the illegal security area;

(b) a declaration that Ranjan and Jude are entitled to travel on any public street in or within any public part of Bangsar Park without obstruction on the part of the Association;

(c) a perpetual injunction restraining the Association and its officials, servants and agents from operating the illegal security business and, in regard to the illegal security area, from permanently or temporarily obstructing public streets or roads, from operating roadblocks or security checkpoints on public streets or roads, from undertaking interrogation of and body searches of people who enter or leave the illegal security area, from inspecting and making copies of identification documents of such people, from conducting surveillance of such people whether by camera or otherwise, from making photographs or making video images of such people and the vehicles on or in which they travel or the animals that they travel on or with, from inspecting and searching motor vehicles, and luggage carried in them, and from inspecting letters, documents and articles carried by any person;

(d) a perpetual injunction restraining the Association and its servants and agents from harassing the Plaintiffs when they approach, enter or remain within the illegal security area, and from harassing the invitees, licensees and other lawful visitors who intend to enter upon the said property;

A (e) an order that the Association do abate the nuisance within such time as is allowed by the Court;

(f) an order for an inquiry by a proper officer of the Court as regards the personal data relating to the Ranjan and Jude that has been acquired by the Association, for an account by the Association to Ranjan and Jude
B as regards such data, and for such consequential relief as the Court may deem fit;

(g) damages, including aggravated damages; and

(h) interest on the damages, costs and such further or other relief as the Court deems fit.

C

Suit 152 – Defence

[19] In its defence, the Association contended that Ranjan and Jude have no *locus standi* and/or cause of action against the Association because the house is located at a road which is situated outside the G&G scheme which
D was implemented by the Association with DBKL's approval.

[20] Furthermore, the construction of the guard house, automated gates and manual barriers are not illegal since DBKL, which has the power to provide authority and/or administrative direction to allow private persons or organisations to operate a security and traffic dispersal area and exclusion
E scheme, has approved the same.

[21] The Association took the position that the G&G scheme was implemented so as to improve public safety and security within the defined areas of Bangsar Park. DBKL's guidelines on guarded communities addresses the rights of residents who opt not to participate in the security scheme.
F Hence, the complaints by Ranjan and Jude, which are essentially of inconvenience rather than of obstruction, should be channelled to DBKL instead of filing this civil suit.

[22] The Association counterclaimed against Ranjan and Jude for a mandatory injunction restraining them whether acting on their own, through
G their servants, and/or agents or any of them, or otherwise in any way from interfering with or harassing the Association, its committee members and the security guards in the discharge of their duties and functions *vis-a-vis* the G&G scheme.

H

DBKL's Position – G&G Scheme

[23] We turn now to DBKL's position *vis-a-vis* the G&G scheme. It is necessary to mention at this juncture that DBKL did in fact give approval for a neighbourhood scheme but it was for a "guarded neighbourhood scheme" and not a "gated and guarded neighbourhood scheme".

I

[24] At any rate, DBKL's approval was staggered or intermittent rather than seamless and came with a multitude of conditions which the Association was obliged to comply with.

Association's Stand In JR 198

[25] In the JR 198, the Association had pleaded that the G&G scheme was run pursuant to DBKL's approval. In para. 4 of the O. 53 statement, the Association pleaded:

> 4. Skim GN hanya beroperasi selepas menerima semua kebenaran [DBKL] yang relevan untuk mengoperasikan skim GN tersebut (termasuk dengan syarat-syarat mengoperasikannya) seperti di bawah:
>
> 4.1. Pada 24.10.2016, [DBKL] telah memberi kebenaran pertama untuk skim GN untuk tempoh daripada 1.10.2016 sehingga 31.12.2016 ('surat Kebenaran Pertama [DBKL] bertarikh 24.10.2016');
>
> 4.2. Pada 8.3.2017, [DBKL] telah memberi kebenaran kedua untuk skim GN untuk tempoh daripada 8.3.2017 sehingga 7.6.2017 ('surat Kebenaran Kedua [DBKL] bertarikh 8.3.2017');
>
> 4.3. Pada 19.3.2018, [DBKL] telah memberi kebenaran ketiga untuk skim GN untuk tempoh daripada 12.3.2018 sehingga 11.3.2019 ('surat Kebenaran Ketiga [DBKL] bertarikh 19.3.2018');
>
> 4.4. Pada 1.4.2019, [DBKL] telah memberi kebenaran keempat untuk skim GN untuk tempoh 11.3.2019 sehingga 10.3.2020 ('surat Kebenaran Keempat [DBKL] bertarikh 1.4.2019').

[26] Thus, the Association was in the invidious position of having, on the one hand, to rely on DBKL's approvals for the neighbourhood scheme as part of its defence in Suit 152, and at the same time having to contend with DBKL's refusal to grant approval to the G&G scheme. Essentially, based on the correspondence between the Association and DBKL, beyond 10 March 2020, there was no approval for any form of neighbourhood scheme. Thus, the Association were somewhat compelled to commence judicial review to impugn DBKL's decision in refusing to grant approval to the G&G scheme and to seek an order of *mandamus* to compel DBKL to grant the requisite approval.

JR 198 – Reliefs

[27] It was against the backdrop of the above background circumstances that the Association filed JR 198 on 16 July 2020, wherein the application for leave to commence judicial review (O. 53 r. 3(1) of the ROC) was to be heard on 29 July 2020. The reliefs sought in JR 198 were directed at DBKL's decision and they are as follows:

> 1. Kebenaran memfailkan Permohonan Semakan Kehakiman dan membenarkan Permohonan Semakan Kehakiman untuk relif-relif berikut:
>
> 1.1. Satu perintah interim menurut Aturan 53 Kaedah 3(5) Kaedah-Kaedah Mahkamah 2012 menggantungkan kesan dan impak Keputusan Responden melalui surat peguamcaranya yang mempunyai rujukan MISC/DBKL/002/19/E bertarikh 1.6.2020 dan Keputusan Rayuan (1) DBKL.JPKB/12/2/8 bertarikh 22.6.2020, sementara menunggu keputusan Permohonan Semakan Kehakiman ini.

1.2. Satu perintah interim larangan (interim prohibition order) melarang Responden mana-mana orang yang bekerja bersama Responden atau wakil Responden mengambil sebarang tindakan menguatkuasakan Keputusan Responden melalui surat peguamcaranya yang mempunyai rujukan MISC/DBKL/002/19/E bertarikh 1.6.2020 dan Keputusan Rayuan (1) DBKL.JPKB/12/2/8 bertarikh 22.6.2020, sementara menunggu keputusan Permohonan Semakan Kehakiman ini.

1.3. Satu perintah deklarasi bahawa Keputusan Responden melalui surat peguamcaranya yang mempunyai rujukan MIS C/DBKL/002/19/E bertarikh 1.6.2020 dan Keputusan Rayuan (1) DBKL.JPKB/12/2/8 bertarikh 22.6.2020 adalah tidak sah dan terbatal kerana tidak rasional, merupakan ketidakpatuhan prosidur dan tidak berkadar dan munasabah.

1.4. Satu perintah deklarasi bahawa Pemohon telah mengendalikan operasi skim GN sejak 11.3.2020 sehingga kini menurut undang-undang dan tidak melanggari mana-mana undang-undang, peraturan-peraturan dan undang-undang kecil bertulis di Malaysia.

1.5. Satu perintah *certiorari* terhadap Keputusan Responden melalui surat peguamcaranya yang mempunyai rujukan MIS C/DBKL/002/19/E bertarikh 1.6.2020 dan Keputusan Rayuan (1) DBKL.JPKB/12/2/8 bertarikh 22.6.2020 dan dibatalkan dengan serta merta.

1.6. Satu perintah *mandamus* terhadap Responden agar Responden dengan segera memberikan kebenaran mengoperasikan skim GN kepada Pemohon berkuatkuasa 11.3.2020 selama setahun iaitu sehingga 11.3.2021 di Jalan Limau Nipis, Jalan Limau Kasturi, Lorong Limau Kasturi dan Lorong Limau Manis 2 di Taman Bangsar, Kuala Lumpur.

1.7. Kos yang sewajarnya diberikan kepada Pemohon.

1.8. Sebarang perintah dan relif yang difikirkan wajar dan adil oleh Mahkamah ini.

DBKL Approvals

[28] We turn now to the DBKL approvals. It would suffice if we were to refer to the last approval that was given by DBKL per DBKL's letter dated 1 April 2019. By the said letter, DBKL gave approval for the period from 11 March 2019 to 10 March 2020. The DBKL letter reads as follows:

> Pengerusi
>
> Persatuan Penduduk Taman Bangsar 95, Jalan Limau Nipis Taman Bangsar 59000 Kuala Lumpur
>
> Tuan,
>
> **Skim Kawalan Kejiranan (Guarded Neighbourhood) Di Jalan Limau Manis, Jalan Limau Nipis, Lorong Limau Manis 2 Dan Jalan Limau Kasturi, Bangsar Kuala Lumpur (Fasa 1) Lanjutan Tempoh Kebenaran**

Dengan hormatnya saya diarah merujuk kepada perkara di atas. A

2. Sukacita dimaklumkan bahawa pihak jabatan telah membuat semakan rekod aduan serta menjalankan pemeriksaan di lokasi dan mendapati tiada pelanggaraan syarat dan garis panduan Skim Kawalan Kejiranan.

3. Oleh yang demikian, sukacita dimaklumkan bahawa pihak DBKL tiada halangan dan memberi kebenaran lanjutan tempoh kepada permohonan pihak tuan secara pentadbiran, untuk tempoh 12 bulan (berkuatkuasa dari 11 Mac 2019 hingga 10 Mac 2020) tertakluk kepada syarat-syarat yang bersesuaian dengan ketetapan dalam garis panduan yang telah dikeluarkan oleh pihak Kementerian Perumahan dan Kerajaan Tempatan (KPKT) dan garis panduan jabatan ini. B

C

4. Sehubungan dengan itu, pihak tuan hendaklah mematuhi semua syarat-syarat yang terkandung dalam LAMPIRAN GN yang disertakan bersama-sama surat ini.

Sekian, terima kasih.

"Berkhidmat Untuk Negara"
"Bersedia Menyumbang Bandar Raya Cemerlang" D

Saya yang menjalankan amanah,

(Amran Bin Abdullah)

Timbalan Pengarah Kanan
Jabatan Kejuruteraan Awam dan Pengangkutan Bandar b.p E
Datuk Bandar Kuala Lumpur

[29] Clearly, there was no approval by DBKL beyond 10 March 2020. Hence, during case management of Suit 152, the issue of DBKL's approval for the neighbourhood scheme came up. The solicitors for DBKL were asked to clarify. By letter dated 1 June 2020, DBKL's solicitors, Messrs Chung, Huang & Khalid took instructions from DBKL and responded to say that DBKL was not granting any further approval. The letter reads as follows: F

Setiausaha
Yang Arif Dato' Rozana binti Ali Yusoff
Mahkamah Tinggi Malaya NCVC9 G
Aras 4, Sayap Kiri
Kompleks Mahkamah Kuala Lumpur
Jalan Tuanku Abdul Halim
50502 Kuala Lumpur.

Tuan/Puan H

Per: Mahkamah Tinggi Kuala Lumpur
Kes No: WA-22NCVC-152-03/2017
Ranjan Paramalingam &
Jude Micory Lobijin ... Plaintif-plaintif

Bangsar Park Residents Association Kuala Lumpur I
(Didakwa Melalui President Nitesh Malani) ... defendan
Dewan Bandaraya Kuala Lumpur
Dato Bandaraya Kuala Lumpur ... pihak-pihak Ketiga

Dengan hormatnya kami merujuk perkara di atas dan pengurusan kes yang telah ditetapkan pada 20 Mei 2020 yang lalu.

Pihak kami seterusnya merujuk kepada arahan Yang Arif Hakim yang mengarahkan untuk Pihak-pihak Ketiga mengesahkan Lanjutan Kebenaran dan Kelulusan kepada Skim "Guarded Neighbourhood" yang diberikan kepada Defendan dan telah tamat tempoh pada 10 Mac 2020 serta pengurusan kes yang kemudiannya ditetapkan pada 27 Julai 2020 yang akan datang.

Dimaklumkan bahawa kami telah mendapat arahan dari anakguam kami untuk memaklumkan kepada pihak Yang Arif Hakim bahawa Pihak-pihak Ketiga tidak akan melanjutkan tempoh kebenaran dan kelulusan kepada Skim "Guarded Neighbourhood" tersebut memandangkan terdapat tuntutan di Mahkamah oleh pihak Defendan terhadap Pihak-pihak Ketiga.

Pihak kami juga akan memaklumkan pengesahan tersebut kepada Peguamcara Plaintif dan Peguamcara Defendan untuk tindakan pihak-pihak seterusnya.

Oleh yang demikian, pihak kami seterusnya memohon samada untuk satu arahan yang terkini dari Yang Arif Hakim bagi penjelasan isu di atas atau meneruskan dengan arahan Yang Arif Hakim yang telah diberikan pada 20 Mei 2020 yang lepas.

Akhir sekali, untuk makluman pihak Puan, pihak kami telah menfailkan surat ini secara e-filing pada 01 Jun 2020.

Yang benar,

Tetuan Chung, Huang & Khalid
Peguamcara Pihak-pihak Ketiga

s.k

1. Peguamcara Plaintif
Tetuan Bastian Vendargon
Unit 15-01 Aras 15, The Vertical
Tower B Business Suite Avenue 3, Bangsar South City
59200 Kuala Lumpur
(Ruj: BV/L/1492/17)

2. Peguamcara Defendan
Tetuan Fahri & Co
15-2, Jalan PJU 7/16A, Mutiara Damansara
47800 Petaling Jaya, Selangor (Ruj: FC.106.1)

The Association's Appeal To DBKL

[30] The Association's solicitors wrote to DBKL's solicitors (per letter dated 8 June 2020) and asked that the matter be reconsidered. The letter was effectively an "appeal" to DBKL for re-consideration and for the grant of approval. The letter reads as follows:

Kami merujuk kepada surat pihak Puan bagi pihak Datuk Bandar Kuala Lumpur ('DBKL') bertarikh 1.6.2020 kepada kami ('surat bertarikh 1.6.2020'). A

Menurut surat 1.6.2020 tersebut, pihak DBKL telah menolak permohonan anak guam kami yang dihantar melalui surat mereka bertarikh 27.2.2020 untuk mendapatkan kebenaran bagi lanjutan tempoh percubaan selain setahun selama setahun untuk mengoperasikan skim "Guarded Neighbourhood" ('skim tersebut'). Punca permohonan itu ditolak atas alasan wujudnya tuntutan di Mahkamah oleh anak guam kami terhadap pihak DBKL selaku pihak Ketiga. B

Anak guam kami terkejut dengan keputusan berlandaskan alasan tersebut walhal tidak pernah diberi amaran awal oleh pihak DBKL sebelum ini bahawa permohonan tersebut akan ditolak. Malah, tiada sebarang perbincangan bersama telah diadakan. C

Kami menegaskan bahawa tujuan anak guam memanggil pihak DBKL sebagai pihak Ketiga adalah bagi pertamanya membela bersama pihak Defendan kesahihan skim Guarded Neighbourhood yang dipersoalkan oleh pihak Plaintif-Plaintif dan keduanya, membantu pihak Mahkamah dengan memberi pencerahan atas isu kesahihan Guarded Neighbourhood skim. Sumbangan pihak DBKL amat penting kerana anak guam kami hanyalah persatuan penduduk yang bukan menetapkan polisi dan menggubalkan undang-undang DBKL tetapi hanya mematuhinya. Tambahan, seperti pihak DBKL ambil maklum, tujuan skim tersebut sememangnya memberi manfaat dari segi keselamatan kepada penduduk Taman Bangsar di mana lebih 80% penduduk di kawasan tersebut mempersetujui akan skim ini sejak beberapa tahun lepas lagi. D E

Keputusan pihak DBKL ini seharusnya dibawa bincang secara bersama, sekurang-kurangnya, kerana ia melibatkan dan akan menjejaskan kepentingan penduduk penduduk di kawasan tersebut. Walaupun ia telah dibantah oleh seorang pemilik rumah di Taman Bangsar tersebut (malah tidak mendiami rumah tersebut) kerana kesahihan kebenaran itu dicabar, pihak DBKL, perlu mempertimbangkan kepentingan majoriti. Malah, masih tiada keputusan bahawa cabaran itu diterima oleh Mahkamah atau pun tidak. F G

Sejurus dengan itu, anak guam kami telah mengarahkan kami untuk bertulis kepada pihak DBKL sebagai rayuan terhadap keputusan tersebut supaya permohonan tersebut dipertimbangkan dan dibenarkan seperti yang telah diluluskan dari tahun-tahun sebelum ini. Kebenaran pihak DBKL ini sesungguhnya akan memberikan keselesaan dan jaminan kepada penduduk-penduduk yang hanya mengharapkan keselamatan sebaiknya di kawasan kediaman mereka yang akan dioperasikan dan dilaksanakan oleh anak guam kami. Kami juga berpendapat bahawa tindakan DBKL, untuk tidak melanjutkan kebenaran untuk meneruskan skim Guarded Neighbourhood akan mendatangkan impak negatif dari segi hujahan. Ini adalah kerana penarikan balik kebenaran atas dasar "ada kes" akan melemahkan usaha Defendan dan DBKL, untuk membela keesahan skim tersebut dan boleh dibaca sebagai DBKL juga tidak yakin dengan keesahan skim tersebut. H I

Anak guam kami berharap agar pihak DBKL dapat memberikan keputusan secepat mungkin memandangkan keputusan untuk membatalkan kontrak pengawal sekuriti, pemunggahan (dismantle) boom gate dan lain-lain bergantung kepada keputusan pihak DBKL. Anak guam kami mengharapkan keputusan yang sebaiknya daripada pihak DBKL dan mereka percaya bahawa perkara ini boleh diselesaikan sebaiknya tanpa perlu sebarang tindakan Semakan Kehakiman terhadap keputusan tersebut.

DBKL's Rejection

[31] By letter dated 22 June 2020, DBKL gave their response rejecting the Association's appeal. This letter lies at the heart of JR 198. DBKL's letter reads as follows:

Pengerusi
Persatuan Penduduk Taman Bargear, 95, Jalen Limau Nipis,
Taman Bangsar
59000 Kuala Lumpur
(u/p: Encik Nitesh Malani)

Tuan/Puan,

Skim Kawalan Kejiranan (Guarded Neighbourhood) Di Jalan Limau Manis, Jalan Limau Nipis Dan Jalan Limau Kasturi, Bangsar Kuala Lumpur.

- Permohonan Lanjutan Tempoh Percubaan -

Dengan segala hormatnya saya diarah merujuk kepada perkara di atas dan surat permohonan tuan yang bertarikh 27 Feb 2020.

2. Permohonan tuan TIDAK DAPAT DIPERTIMBANGKAN memandangkan terdapat aduan yang diterima oleh Jabatan dan kes Mahkamah Tinggi yang akan ditetapkan pada 27 Julai 2020.

3. Permohonan tuan untuk melanjutkan tempoh percubaan TIDAK DAPAT DIPERTIMBANGKAN kerana didapati ketidak pematuhan syarat-syarat kelulusan Skim Kawalan Kejiranan seperti berikut:

(i) Penutupan terus (halangan) secara kekal seperti penggunaan barrier, penghalang besi dan lain-lain ke atas jalan awam adalah tidak dibenarkan sama sekali. Manakala penggunaan penghalang besi (boom gate) terkawal terhadap jalan awam hanya dibenarkan bermula jam 10.00 malam hingga 6.00 pagi sahaja dengan pengawalan pengawal keselamatan sepenuhnya pada waktu tersebut. Penutupan jalan awam tidak dibenarkan sama sekali selain dari tempoh yang dinyatakan. (Perkara (d) Lampiran Kelulusan Skim Kawalan Kejiranan dan Borang Permohonan & Garis Panduan Skim Kawalan Kejiranan Perkara (g)).

(ii) Kebenaran adalah bersifat sementara dan pihak DBKL boleh menarikbalik kebenaran ini dan mengarahkan untuk meroboh pondok kawalan apabila dirasakan perlu atau menerima bantahan kuat dari orang awam atau pelanggaran kepada mana-mana syarat

kebenaran ini, tanpa sebarang tuntutan/pampasan boleh dibuat oleh pihak tuan/persatuan penduduk. (Perkara (m) Lampiran Kelulusan Skim Kawalan Kejiranan).

(iii) Pihak tuan/persatuan penduduk hendaklah pada setiap masa menanggung kerugian dan melindungi nama Datuk Bandar Kuala Lumpur daripada sebarang lintulan pihak ketiga sekiranya berlaku sesuatu perkara yang tidak diingini akibat daripada Kebenaran yang diberikan ini. (Perkara (n) Lampiran Kelulusan Skim Kawalan Kejiranan).

(iv) Walaupun kebenaran secara pentadbiran ini diberikan, pihak luar adalah sentiasa tertakluk kepada mana-mana undang-undang bertulis, peraturan-peraturan dan undang-undang kecil berhubungan dengan permohonan ini. (Perkara (p) Lampiran Kelulusan Skim Kawalan Kejiranan).

Sekian, terima kasih.
"Berkhidmat Untuk Negara"
"Bersedia Menyumbang Bandar Raya Cemerlang"

Saya yang menjalankan amanah,

(Tan Kim Bock @ Steven)
Pengarah
Jabatan Pengangkutan Bandar
Dewan Bandaraya Kuala Lumpur
b.p. Datuk Bandar Kuala Lumpur

Aftermath Of DBKL's Rejection

[32] What happened next is that the appellants' solicitors who were aware of DBKL's stand, sent a letter dated 2 June 2020 to the Association's solicitors, Messrs Fahri & Co, which reads as follows:

It is clear that DBKL's approval has lapsed on 10.3.2020 and no further approval or renewal will be granted to the Defendant.

We are instructed to put the Defendant on notice that the Gated and Guarded Scheme has been in operation without due approval since 10.3.2020 and continues to be so without any alleged "lawful excuse".

This, is without derogation of our clients' stand that it is unlawful *per se* and constitutes a continuing nuisance.

Please let us hear your client's views on an urgent basis, in order that we can advise our clients appropriately.

[33] Messrs Fahri & Co wrote to the appellants' solicitors (per letter dated 9 June 2020) indicating that the Association may take the judicial review route to challenge DBKL's decision not to grant approval for the G&G scheme. The letter reads as follows:

We refer to the above matter and your letter dated 2.6.2020 to us regarding the Third Parties' no further approval and renewal about the Gated and Guarded Scheme ('the approval').

A Our clients instructed us to reply as follows.

1. Our clients applied for the approval from the Third Parties prior to 9.3.2020, however received no replies at all till recently on 1.6 2020 from their lawyers;

2. **Their non-approval was merely based on the ground that our clients have a case against them, which is unreasonable and vulnerable to judicial review by our clients**;

B

3. Our clients instructed us to appeal against the Third Parties' decision (the appeal) and we have lodged the appeal to them on 8.6.2020 and currently waiting for their response;

C

4. Our clients are contemplating how best to deal with the situation without resulting in a multiplicity of proceedings. (emphasis added)

Appellants – "Affected Persons"

[34] By letter dated 19 June 2020, Messrs Bastian Vendargon, acting for the D appellants in Suit 152, wrote to the Association's said solicitors and put them on notice that they (the appellants) are "affected persons" and should be given notice of any judicial review proceedings. The letter reads as follows:

We refer to the above matter and your letter dated 9 June 2020 and have our clients' instructions to reply as follows:

E

1. Our clients make no comment regarding your client's alleged grievances and appeals, but maintain their rights in law and the legal stance they have consistently taken all along.

2. *If your client is minded to institute Judicial Review proceedings, we place on record here that our clients would be "affected persons" within the meaning in Order 53 Rules of Court 2012, and as such our clients expect to be given notice of such proceedings*.

F

3. Our clients maintain that:

   (a) Our clients' rights sought to be established in their civil suit is independent of any disputes your client may have with Third Parties; and

G

   (b) Your client has been, and continues with its acts, neglects and defaults complained of by our client, when the "approval" it has relied on is not even in force. (emphasis added)

H **[35]** There is no dispute that the appellants were unaware of the fact that JR 198 had been filed on 16 July 2020. However, on 27 July 2020, during the case management of Suit 152, the solicitors for the appellants became aware that JR 198 had been filed, and that it was fixed for hearing of the leave application on 29 July 2020.

I

Events That Transpired In JR 198

[36] On 29 July 2020 the High Court granted leave under O. 53 r. 3(1) of the ROC to allow the Association to commence judicial review against DBKL. The Association's solicitors did not respond to the letter dated 19 June 2020 that was previously written by Messrs Bastian Vendargon asking that the papers be served on them.

[37] The appellants' solicitors continued to send letters to the Association's solicitors and asked that the cause papers for JR 198 be served on them, as the appellants were directly affected by JR 198. The Association declined to do so.

Enclosure 30

[38] On 26 July 2021, the appellants filed encl. 30. The Association and DBKL opposed encl. 30. Both these parties took the position that the appellants do not meet the qualification of persons "directly affected" so as to be entitled to be served with the cause papers and be joined as parties to the judicial review application.

[39] In addition, DBKL further alluded to the fact that they were in discussions with the Association with a view to resolving the stalemate *vis-a-vis* approval for the G&G scheme and that the joinder of the appellants as parties to the judicial review would hinder or scuttle the resolution of the dispute between the Association and DBKL.

High Court – Dismissal Of Enclosure 30

[40] We may now turn to the decision that was rendered by the judge. The High Court's reasons for dismissing encl. 30 may be gathered from the grounds of judgment which has been reproduced in full and reads as follow:

> Introduction
>
> [1] This is an application by the Proposed Interveners by way of Notice of Application (encl. 30) dated 26.7.2021 to intervene in this judicial review proceeding and be named as Respondents.
>
> [2] The Proposed Interveners is seeking the following reliefs:
>
> 2.1 That Ranjan Paramalingam and Jude Micory Lobijin (the Proposed Interveners) being persons directly affected by this application for judicial review within the meaning of Order 53 Rule 4(2) of the Rules of Court 2012 (ROC) ought to have been served with a copy of the Notice of Hearing of Application for judicial review in Form 110 and other relevant documents not later than 14 days before the date of hearing specified in the said Form;
>
> 2.2 That the Applicant do serve all cause papers pursuant to Order 53 Rule 4(2) of the ROC on the Proposed Interveners' Solicitors forthwith;

2.3 That the Proposed Interveners be permitted pursuant to Order 53 Rule 8(1) of the ROC to be heard in opposition to the application for judicial review;

2.4 That the Proposed Interveners be granted leave and be added as Respondents in the application for judicial review;

2.5 That the costs of and incidental to this application be provided for; and

2.6 That such further or other relief be granted as deemed fit.

[3] The grounds of this application are contained in the Affidavit of Jude Micory Lobijin affirmed and filed herein, and briefly are as follows:

3.1 That the Proposed interveners are "persons directly affected" by the Application for judicial review within the meaning of Order 53 Rules 4(2) of the ROC and at common law and at the time leave for judicial review was sought for there was a pending suit in nuisance and breach of personal data protection between the parties, being Kuala Lumpur High Court Suit No.: WA-22NCvC-152-03/ 2017.

3.2 That the Applicant had not served the Proposed Interveners the cause papers relating to the Application for judicial review as required by the Rules and at common law, and as requested by the Proposed Interveners.

3.3 That the Applicant, while apparently still refusing to recognise that the Proposed Interveners are "persons directly affected", had refused to give the Proposed Interveners copies of the various cause papers relating to this Application for judicial review.

3.4 That, in the application for judicial review, the Applicant is seeking to obtain relief from the Court against the Respondent's decision not to approve the Applicant's application to operate a gated and guarded community;

3.5 That the approval sought by the Applicant without success from the Respondent has been and is intended by the Applicant to be the foundation for its defence against the Proposed Interveners' claim in tort against the Applicant for operating a gated and guarded scheme, in the High Court and further appeal in the Court of Appeal; and

3.6 The Proposed Interveners will be affected by the grant of any remedy sought by the Applicant.

[4] After the hearing, I dismissed the Proposed Interveners' application in encl. 30. I will now set out the grounds of my judgment.

Background Facts

[5] The background facts gathered from the cause papers and submissions by parties are as follows:

5.1 P.S Ranjan is the registered owner and landlord of the dwelling house known as No. 79, Jalan Limau Manis, Bangsar Park, 59000 Kuala Lumpur (the house), and Jude is the tenant thereto;

5.2 P.S Ranjan and Jude were the Plaintiffs in the Kuala Lumpur High Court Civil Suit No.: WA-22NCvC-152-03/2017 (the Civil Suit) which is now pending appeal in the Court of Appeal;

5.3 The Civil Suit was filed against the Applicant for nuisance and breaches of data protection. That Civil Suit and causes of action arose from this "gated and guarded" scheme which is the subject of this judicial review proceeding;

5.4 Pending the disposal of the Civil Suit then, the Applicant filed a judicial review proceeding against the Respondent to obtain remedies as stated in encl. 1;

5.5 On 29.7.2020, the solicitors for the Proposed Interveners wrote to the Applicant's solicitors *inter alia* reiterating that the Proposed Interveners were "persons directly affected" and should be served with the substantive cause papers;

5.6 On 15.9.2020, the solicitors for the Applicant replied refusing to serve the judicial review cause papers as their client took the position that the Proposed Interveners were not "persons directly affected". No reasons were given for this stand taken by the Applicant; and

5.7 The Proposed Interveners, dissatisfied with the Applicant's reply, filed this application to this court to seek an Order to intervene in this judicial review proceeding and be named as Respondents.

The Law

[6] The law on intervention or joinder of parties is trite and well settled. The granting of leave to intervene or leave to be made a party in a proceeding is a discretionary one. Generally, the court will grant the Proposed Interveners leave to intervene if he can show that he has an interest directly related to the action. However, authorities have established that the interest the Applicant must have or possess means a legal interest not mere commercial interest.

[7] The law in respect of evaluating an intervener's application had been laid down by the Privy Council in *Pegang Mining Company Ltd v. Choong Sam & Ors* [1968] 1 LNS 96; [1968] 1 MLRA 925; [1969] 2 MLJ 52.

[8] The decision in *Pegang Mining* (*supra*) was adopted by the then Supreme Court in *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 1 CLJ (Rep) 344; [1992] 1 MLRA 350; [1992] 2 MLJ 63.

[9] In *Tohtonku Sdn Bhd* (*supra*) the then Supreme Court had this to say:

> It is settled law, on the authorities, that a party may be added if his 'legal, interest' will be affected by the judgment in the action but not if his commercial interest alone would be affected: per Lord Diplock in *Pegang Mining Co Ltd v. Choong Sam Ors* at pp 55-56.

[10] The approach formulated by Lord Diplock in *Pegang Mining* (*supra*) has been adopted in numerous local decisions. (See: *Arab Malaysian Merchant Bank Bhd v. Dr Jamaludin Dato' Mohd Jarjis* [1991] 1 CLJ (Rep) 19; [1991] 1 MLRA 104; [1991] 2 MLJ 27; *Tsoi Ping Kwan v. Medan Juta Sdn Bhd & Ors* [1996] 4 CLJ 553; [1996] 1 MLRA 578; [1996] 3 MLJ 367; [1996] 3 AMR 3591; *Soo Hong & Leong Kew Moi & Ors v. United Malayan Banking Corp Bhd & Anor* [1997] 2 CLJ 548; [1996] 2 MLRA 547; [1997] 1 MLJ 690; [1997] 2 AMR 1173; *Takang Timber Sdn Bhd v. Government of Sarawak & Anor* [1998] 3 CLJ Supp 413; [1998] 1 MLRH 508.

[11] Therefore, from the above authorities, it is patently clear that for the court to allow the proposed interveners to intervene or to be added as a party, *the proposed interveners must show to the court that from the circumstances of the matter, the proposed interveners have legal interest. A mere commercial interest in the outcome of the matter before the court does not justify intervention or joinder as a party*.

The decision of the Court

[12] Having perused the cause papers, I am of the view that the issue to be determined is whether the Proposed Interveners are directly "affected person" within the meaning of Order 53 of the ROC.

[13] It is to be noted that the Proposed Interveners had previously filed the Civil Suit against the Applicant in Kuala Lumpur High Court, claiming nuisance, breach of Personal Data Protection Act and others for operating the Guarded Neighbourhood scheme (GN) which was later dismissed by Yang Arif Hakim Dato' Rozana Ali Yusoff on 26.1.2021.

[14] The Proposed Interveners argued that they are the person directly affected and ought to be the Respondents in the judicial review proceeding because they are affected by the issue of nuisance and illegality of the operations of the GN.

[15] I am of the considered view that the Proposed Interveners have failed to show their position as an interested person in this judicial review proceeding.

[16] I find support in my view after perusing the judgment of the Civil Suit filed by the Proposed Interveners which was reported in *Ranjan Paramalingam & Anor v. Bangsar Park Residents Association* [2021] 1 LNS 403, where Yang Arif Hakim Dato' Rozana Ali Yusoff had dismissed the suit filed by the Proposed Interveners.

[17] In her grounds of judgment, the learned judge, among others makes the following findings:

(a) there was no evidence produced as to when and number of times the Proposed Interveners were denied access by the guards from entering the GN to have access to the back lane.

(b) there was no evidence that the Proposed interveners were obstructed from going to the back lane of the house *via* the guard house.

(c) there was no private nuisance caused by the Defendant (the Applicant in this case) as the Proposed Interveners' use and enjoyment of the house and in particular to access to the house back lane through the guard house.

(d) the Proposed Interveners were not in any way prevented or obstructed from leaving or entering the house except that the Proposed Interveners have to go through the guard house if they want to access the back lane likewise any other residents who have religiously paid their security and maintenance charges of GN.

(e) the Proposed Interveners did not produce any evidence that they have been obstructed or prevented from entering or leaving the GN after accessing the house back lanes through the guard house.

(f) there was no evidence to support the Proposed Interveners' contention that the existence of GN had caused the house or, their houses within the area to have devalued or depreciated particularly due to traffic congestion, noise, air pollution and parking problems.

(g) The 3rd Party (the Respondent in this case) continuously renewed the Defendant's application for approvals and even increased the approval period from 3 months to one (1) year. The 3rd party also conduct an investigation which reveal that the Defendant did not breach any of the terms and conditions as reflected in the 4th approval letter.

(h) As there was no evidence of misuse of personal data, the learned judge finds that there was no breach on part of the Defendant since the collection of such personal data was necessary for the purpose of preventing or detecting a crime in the GN pursuant to Section 130(2)(a)(i) Act 709.

[18] *Based on the findings and dismissal of the Civil Suit above, it is clear that the Proposed Interveners had no legal interest in this judicial review proceeding and are not directly "affected person" within the meaning of Order 53 of the ROC.*

[19] *The decision in the Civil Suit above clearly shows that there was no nuisance or any other cause of action that arose from the operation of the GN. Hence, it is my view that the Proposed Interveners have no interest in this matter.*

[20] *Further, I find that there are no reliefs sought by the Applicant against the Proposed Interveners in the judicial review proceeding. Therefore, there is no justification for the Proposed Interveners to be the persons directly affected by it.*

[21] *All in all, I am of the considered opinion that the Proposed Interveners are attempting to bring this Court to revisit the finding of facts made in the Civil Suit. The finding of facts in the Civil Suit have shown that the Proposed Interveners are not affected by the Applicant's operation of the GN, which led to the dismissal of their case. Therefore, I view that the Proposed Interveners have no direct or indirect legal interest to intervene here.*

A Conclusion

[22] Premised on the aforesaid reasons, I am of the view that the Proposed Interveners had failed to prove that they are persons directly affected by the judicial review proceeding which justify them to intervene.

B [23] As such, the Proposed Interveners application in encl. 30 is dismissed with costs of RM2,000.00 to the Applicant and Respondent respectively subject to the allocator fee. (emphasis added)

The Arguments

[41] Before us, counsel for the appellants complained that the judge erred C in that he failed to appreciate and so hold, that the appellants were "affected persons" within the meaning of O. 53 r. 4(2) of the ROC and as such, are "affected persons". Thus, it was contended that the Association ought to have served a sealed copy of Form 110 together with the statement pursuant to O. 53, and all affidavits in support on the appellants, as mandated by O. 53 D r. 4(2) of the ROC. It was also argued that in any event, the judge failed to appreciate and evaluate the affidavit evidence and the statement pursuant to O. 53 of the ROC which had extensive references to the appellants and Suit 152 for private law remedies between the appellants (*qua* plaintiffs) and the Association (*qua* defendant).

E **[42]** In amplification, counsel for the appellants said that at the very least, the appellants ought to have been permitted to be heard during the application for judicial review pursuant to O. 53 r. 8(1) of the ROC, particularly since such persons need not even be parties to the proceedings.

[43] According to counsel, the appellants were directly affected by the F judicial review as they had an interest in the potential outcome of the judicial review proceedings. Counsel also highlighted the fact that the Association and DBKL were attempting to settle the matter, and any such purported settlement in a public law matter may only be effected if permitted by the court seized of jurisdiction to determine that public law case, and that being G the case, the appellants here have a direct interest to be heard in those proceedings before any settlement or decision is made.

[44] According to counsel, the judge did not take this into account in reaching his conclusion that the appellants did not meet the threshold for intervention.

H **[45]** In response, counsel for the Association relied on the fact that encl. 30 was filed about one year after the appellants became aware that JR 198 had been filed. Counsel also emphasised that the judge relied on the dismissal of Suit 152 (per the High Court's order dated 26 January 2021) to hold that the appellants have no direct interest in JR 198.

I **[46]** The Association sought to rely on the judge's eight reasons to contend that the appellants were not affected by JR 198. It was also highlighted that on 28 June 2022, the Court of Appeal had dismissed the appellants' appeal

against the dismissal of Suit 152. It was therefore contended that the High Court's findings in Suit 152 had been affirmed by the Court of Appeal and that the intervention application (encl. 30) is a manifestation of an abuse of process in that the appellants are purportedly seeking to use the intervention route to revisit the findings of fact that were made in Suit 152.

[47] Accordingly, the Association contended that the appellants are not persons who are directly affected by JR 198 justifying or entitling intervention on their part. Counsel for DBKL adopted the Association's stand and likewise contended that the appellants did not satisfy the threshold for intervention.

Our Decision

[48] At the outset, it should be highlighted that although in paras. [2] and [3] of the grounds of judgment, the judge correctly noted that the application (encl. 30) was being moved under O. 53 r. 4(2) and r. 8(1) of the ROC, he seemed to have dealt with the application as if it were an application to intervene under O. 15 r. 6(2)(b)(i), (ii) of the ROC. Now, although the judge did not make any express reference to O. 15 r. 6(2)(b)(i), (ii) of the ROC, it is quite clear from the cases that were referred to at paras. [6] to [11] of the grounds of judgment that he was having in mind O. 15 r. 6(2)(b)(i) or (ii) of the Rules of Court 2012.

[49] In this regard, we note that the judge made reference to the case of *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344; [1992] 1 MLRA 350; [1992] 2 MLJ 63 (SC) where, at p. 345 (CLJ); p. 65 (MLJ), the Supreme Court agreed with the decision of the High Court (*Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1989] 1 CLJ 1128; [1989] 2 CLJ (Rep) 575; [1989] 2 MLJ 298) in respect of the "test for intervention" and stated:

> It is settled law, on the authorities, that a party may be added if his 'legal interests' will be affected by the judgment in the action but not if his commercial interests alone would be affected: per Lord Diplock in *Pegang Mining Co Ltd v. Choong Sam & Ors* 1 at pp 55-56. In that case, the Privy Council had formulated the test to determine whether a party's interests in the matter are 'legal' or merely 'commercial' in the following words (at p 56):
>
> > A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in this action?

[50] The application by Ranjan and Jude (encl. 30) had nothing to do with intervention of parties as contemplated by O. 15 r. 6(2)(b)(i) or (ii) of the ROC. What the judge ought to have considered was intervention under O. 53 r. 4(2) and r. 8(1) of the ROC. As such, the judge's approach to encl. 30 in treating it as an application to intervene under O. 15 r. 6(2)(b)(i), (ii) of the ROC was fundamentally flawed.

[51] In dealing with encl. 30, the judge ought to have kept at the forefront of his judicial mind, the pronouncements by the Federal Court in *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405, [2009] 6 MLJ 307; [2009] MLJU 693 (FC) ('*MAIS v. Bong*') where the question was whether O. 15 r. 6(2)(b) of the Rules of the High Court 1980 ('RHC') (similarly worded as O. 15 r. 6(2)(b) of the ROC) applied to an application for intervention in judicial review proceedings.

[52] The case of *MAIS v. Bong* concerned a judicial review proceeding between the residents of Shah Alam and the local authority, namely Majlis Bandaraya Shah Alam ('MBSA') in regard to MBSA's decision to allocate approximately 13.84 acres of land in the housing estate as a Muslim burial ground.

[53] The appellant, Majlis Agama Islam Selangor ('MAIS') applied to intervene under O. 15 r. 6(2)(b) of the RHC but was refused leave to intervene in the judicial review proceedings by the Shah Alam High Court, as they did not meet the threshold for intervention.

[54] On appeal, the Court of Appeal agreed with the High Court that MAIS did not meet the threshold for intervention. However, the Court of Appeal went further and held (by majority) that O. 15 r. 6(2)(b) of the RHC was inapplicable for intervention under O. 53 of the RHC.

[55] The Federal Court upheld the majority decision of the Court of Appeal and dismissed the appeal by MAIS. The Federal Court speaking through Zulkefli Makinudin FCJ (as he then was – later President of the Court of Appeal) said:

> Decision
>
> [15] I shall first deal with Question 1. In answering the first question posed before this court due consideration must be given to the fact that the RHC has specific rules dealing with judicial review as set out under O. 53 RHC 1980. Under O. 53 of the RHC, the following are specifically provided for:
>
> (i) any person who is adversely affected by the decision of any public authority shall be entitled to make the application (Order 53 Rule 2(4) of RHC);
>
> (ii) the applicant shall serve a copy of the application and all supporting documents specified under the rules on all persons directly affected by the application; (Order 53 Rule 4(2) of RHC); and
>
> (iii) any person who desires to be heard in opposition to the application and appears to the judge to be a proper person to be heard may be heard (Order 53 Rule 8(1) of RHC).
>
> [16] Based on the above well laid-out provisions in the RHC it is evident that the Rules Committee had intended to establish a specific framework for the determination of applications for judicial review. In my view O. 53

of the RHC was specifically drafted for that purpose. It has been revised over time, the last amendment to O. 53 of the RHC having taken place in the year 2000 by which it was substantially revised and amended *vide* PU(A) 342/2000. *It is my judgment that O. 53 r. 8(1) of the RHC specifically caters to persons claiming an interest in the proceedings and who wish to be heard in opposition. This is discernible from the language of the rule in particular the phrase "... appears to the judge to be a proper person ...". As a specific rule was put in place for judicial review proceedings, the more general basis for intervention under O. 15 r. 6(2)(b) of the RHC cannot be invoked*. The maxim "*generalia specialibus non derogant*" would apply. *The decision of the majority of the Court of Appeal in the present case that the appellant's application must be brought under O. 53 r. 8(1) of the RHC in my view was therefore correct. Question 1 is therefore answered in the negative*. (emphasis added)

[56] The next important case that ought to have been considered in relation to intervention in judicial review proceedings is the decision of the High Court in *Ottavio Quattrocchi v. Menteri Dalam Negeri Malaysia & Ors* [2001] 4 CLJ 778; [2001] 6 MLJ 561 (HC). In that case, the applicant ('*Quattrocchi*') who was described as a fugitive criminal of Indian nationality, was seeking to quash the Minister's order for extradition which was made pursuant to a request by the Union of India under s. 12 Extradition Act 1992 (Act 479).

[57] Prior to the proceedings proper, Quattrocchi obtained leave to apply for judicial review of the actions of the Home Minister and the Magistrate leading to his arrest, and sought orders of *certiorari* to quash the special direction and the order of the Home Minister, and the warrant of apprehension of the Magistrate. The Union of India applied to be included as a party to the judicial review proceedings. Quattrocchi vehemently opposed the Union of India's application to intervene in the judicial review proceedings.

[58] Justice Abdul Aziz (as he then was – later FCJ) allowed the Union of India's intervention application. The judge lucidly explained the criteria for intervention in judicial review proceedings at pp. 780 to 781 (CLJ) and pp. 564 to 565 (MLJ). He said:

Several grounds have been relied on as entitling the Union of India to be added as a party. The main ground relies on O. 53 r. 4(2). To aid understanding of r. 4(2), I need to say that r. 3(2) requires an application for leave to be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on, and r. 4(1) requires an applicant who has been granted leave to file a notice in Form IIIB, which is a notice of hearing of the substantive application.

Rule 4(2) provides as follows:

Upon extraction of the sealed copy of Form IIIB the applicant shall serve a copy of the same together with a copy of the statement and all affidavits in support on all persons directly affected by the application not later than 14 days before the date of hearing specified in the said Form.

A The use of the word "shall" makes it mandatory that the notice of hearing, the statement and the affidavits be served on "all persons directly affected" by the application.

I proceed on the basis that because *a person directly affected is entitled as of right to be served with the notice of hearing and the relevant papers, he is entitled* B *to be added as a party to the application. He has only to show that he is a person directly affected. If he can show that, he does not have to give reasons why he should be added as a party. I say that because that must be the purpose of making it mandatory that the papers be served on him – to enable him to be made a party if he so wishes*. In *Regina v. Liverpool City Council, Ex parte Muldoon* [1996] 1 WLR 1103 ('*Ex parte Muldoon*'), the Secretary of State applied for an order C that he be joined as a respondent to applications for judicial review as being a person directly affected within the English O. 53 r. 5(3). See p. 1104, at bottom. If he had succeeded in showing that he was a person directly affected, I do not doubt that he would have been ordered to be joined. In *Tomlin v. The Preliminary Investigation Committee of the Dental Council of Hong Kong* [1995] 1 HKC 533 ('*Tomlin*'), there was no dispute D that the dentist was a person directly affected under O. 53 r. 5(3). The court said at p. 541B that if he so wished he could apply to be joined as a respondent. I take that to mean he had a right to be joined. He did not wish to be joined, though.

So if the Union of India are a person directly affected, they are entitled to be joined E *as a respondent in the judicial review. They need not give reasons why they need to be joined. The reason is in the very fact that they are directly affected by the application for judicial review. All that they need to show is that they are a person directly affected by the application. The phrase "directly affected by the application" must be construed to mean directly affected by the success of the application* and not merely or solely by the fact or existence of the application or by what may F transpire in the hearing of the application. For if the application were to fail, the position of the matter will remain as before, and no one will have been, in a substantive or material sense, affected by it. (emphasis added)

[59] We turn now to the present appeal. The critical question is whether the appellants, as the proposed interveners, had a direct or an indirect interest G in the JR 198. The distinction is important and imperative as intervention is only allowed when the proposed intervener can demonstrate a "direct interest" instead of one which is indirect or tangential.

[60] Hence, those with loose or nebulous connections with the judicial review are not persons who can say that they are directly affected by the H judicial review application.

[61] In this regard, it is imperative to refer to the Federal Court's opinion on the circumstances and occasion which may give rise to a direct interest as opposed to indirect interest. In *MAIS v. Bong*, besides ruling that O. 15 r. 6(2)(b) of the RHC did not apply to proceedings under O. 53 of the RHC, I the Federal Court proceeded to examine the concept of "direct interest"/

"directly affected" (O. 53 r. 4(2)) and "proper person" (O. 53 r. 8(1)) and concluded that MAIS only had an indirect interest and did not meet the requisite threshold for intervention under O. 53 of the RHC.

[62] The Federal Court said:

> [22] It is my view that the appellant *at best has an indirect interest*. In the affidavit in support of its application its interest (other than wakaf) is premised, *inter alia*, on the following points as spelled out under the provisions of ss 4 to 7 of the Enactment:
>
> (a) It is a statutory body;
>
> (b) It oversees the administration of Islam in the state of Selangor;
>
> (c) It has a duty to promote and protect the interest of Muslims and the Islamic community in the state.
>
> [23] It is my finding that the basis of the appellant's purported interest in the present judicial review proceedings has been stated in terms which would appear to go beyond the scope of the provisions of the Enactment relied upon. Matters of local government do not fall within the objects of MAIS. *MAIS had nothing to do with the decisions under challenge in the judicial review proceedings. In any event, it is not directly affected by the decisions sought to be reviewed*. For sufficient interest to justify intervention under O. 15 r. 6(2)(b) of the RHC *a direct interest must be established. An indirect or commercial interest does not satisfy the requirement*. MAIS clearly does not satisfy this requirement. On this point in the case of *Pegang Mining Co Ltd v. Choong Sam & Ors* [1969] 2 MLJ 52, Lord Diplock in delivering his speech at p 55 stated as follows:
>
> > It has been sometimes said as in *Moser v. Marsden* and in *In Re IG Farbenindustrie AG* that a party may be added if his legal interests will be affected by the judgment in the action but not if his commercial interests only would be affected. While Their Lordships agree that the mere fact that a person is likely to be better off financially if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party, they do not find the dichotomy between 'legal' and 'commercial' interests helpful. A better way of expressing the test is: *will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?*
>
> [24] I am of the view *the use of the phrase 'proper person' in O. 53 r. 8(1) of the RHC must be read as referring to persons with a direct interest*. In this regard the test for joinder as a party in judicial review was considered by the House of Lords in *R v. Rent Officer Service, ex parte Muldoon; R v. Rent Officer Service, ex parte Kelly* [1996] 3 All ER 498. It was concluded in that case that an indirect interest, even on the part of the Secretary of State, was not sufficient to justify joinder. I am of the view the same test would apply to the appellant in the present case.

A Unlike the position under the UK Civil Procedure Rules ('CPR'), the right of 'any person to be heard in opposition' in our O 53 r 8(1) of the RHC is qualified by the requirement of that person being a 'proper person'. Rule 54.17.1 of the CPR states 'any person may apply to file evidence or make representation at the hearing of the judicial review'. *There is therefore a significant qualification under our O 53 r 8(1) of the RHC 1980 which indicates* B *some level of interest. It does not stand to reason for a party not having any direct interest to be allowed to be joined as a party, more so in the light of the nature of the jurisdiction being exercised in judicial review proceedings.*

[63] The next case on the topic of intervention in judicial review is the Court of Appeal's decision in *Advance Synergy Capital Sdn Bhd v. The Minister* C *Of Finance, Malaysia & Anor* [2011] 7 CLJ 557; [2011] 6 MLJ 376 (CA).

[64] In that case, the applicant, Advance Synergy Capital Sdn Bhd ('ASC') applied for judicial review to quash the approval of the Minister of Finance (MOF approval) which was granted to ACE INA International Holdings Ltd ('ACE') for the execution of a sale and purchase agreement in relation to a D call option to purchase ASC's 49% of the issued and paid-up capital in Advance Synergy Insurance Berhad. ACE applied to intervene. The background facts (per the grounds of judgment) are as follows:

[3] ASC and ACE own 49% and 51% respectively of the entire issued and E paid-up capital in Advance Synergy Insurance Bhd ('ASIB').

[4] Pursuant to an agreement dated 12 August 2008 (as amended by a letter dated 20 August 2008) and the amended and restated shareholders agreement ('the ARSA') dated 1 January 2009 entered into between three parties *viz* ASC, ACE and Advance Synergy Berhad, ACE was granted a Call Option to purchase ASC's 49% of the issued and paid-up share in F ASIB ('the option shares'), subject to the terms and conditions of the draft sale and purchase agreement ('the SPA') set out in sch. 1 to the ARSA. The parties further agreed that the execution of the SPA is subject to the prior approval of the Minister of Finance acting on the recommendation of the Central Bank ('Bank Negara') under the Insurance Act 1996 ('the MOF approval').

G

[5] Prior to the ARSA, ACE had *vide* Bank Negara's letter dated 28 August 2007 obtained 'in principle' approval consistent with Circular JPI: 27/1998 entitled "acquisition or disposal of interest in shares of an insurer".

H [6] ACE exercised the call option on 4 February 2009 and notified ASC on 10 February 2009.

[7] In anticipation of the exercise of the call option and as envisaged in cl. 6.01 of the ARSA, *vide* letter dated 3 February 2009, ACE requested ASC to give its consent to ACE's application for the MOF approval under s. 67 of the Insurance Act 1996 ('s. 67'). ASC failed to accede to ACE's I request, but had instead sought to delay and/or thwart ACE's application.

[8] ACE then initiated High Court Originating Summons No. D-24NCC-72-2009, seeking a mandatory order to compel ASC to forthwith give its written consent and provide documents and information to Bank Negara and/or the Minister of Finance in respect of ACE's application for the MOF approval required under s. 67 ('the first OS proceedings'). ASC made an application to stay the first OS Proceedings pursuant to s. 10 of the Arbitration Act 2005 ('the stay application') pending reference to arbitration. This stay application was heard and dismissed by the High Court on 5 April 2010. The first OS was heard and allowed on 12 May 2010. ASC then gave its letter of consent on 21 May 2010.

[9] On 26 May 2010, ACE submitted its application to Bank Negara for the MOF approval which was granted on 9 September 2010.

[10] Pursuant to the MOF approval and the terms of the ARSA, ACE *via* its solicitors requested ASC to execute the SPA and other relevant documents to complete the acquisition of the option shares, but ASC declined to do so. ACE then initiated High Court Originating Summons No. D-24NCC-332-2010 ('the second OS proceedings'), seeking various orders to compel ASC to give effect to the acquisition of the option shares. ACE obtained an order in terms of the second OS.

[11] On 18 October 2010, *ASC commenced the judicial review proceedings before the High Court, seeking an order of certiorari to quash the MOF approval. At the leave stage of the judicial review proceedings, ACE made an application for leave to intervene as the second respondent*. The High Court allowed ACE's application. *ACE has since been added as the second respondent*.

[12] Hence, the instant appeal by ASC. (emphasis added)

[65] The Court of Appeal dismissed the appeal by ASC and upheld the High Court's decision to allow ACE to intervene as the second respondent at the threshold stage of ASC's application for judicial review. Counsel for ASC subscribed to the view that at the leave stage of the judicial review proceedings, only the Attorney General and the putative respondent could be heard and that under O. 53 r. 8(1) of the RHC, ACE could only be heard at the judicial review proceedings after leave had been granted.

[66] However, counsel for ACE stressed that at the leave stage of the judicial review proceedings, ACE being the recipient of the MOF approval would be directly affected by the outcome of the challenge by ASC to the MOF approval in the judicial review proceedings and so ACE was the proper person to be heard. The question that arose was whether, upon a true construction of O. 53 r. 8(1) of the RHC, the High Court was correct in granting ACE leave to intervene as the second respondent at the leave stage of ASC's application for judicial review to challenge the MOF approval. It was argued for ACE, that being the recipient of the MOF approval, they would be directly affected by the outcome of the challenge by ASC to the MOF approval in the judicial review proceedings and so ACE was the proper person to be heard.

[67] The Court of Appeal speaking through Low Hop Bing JCA said:

Ambit of "Application For judicial review" in O. 53 r. 8(1)

[22] Having considered and determined the Attorney General's *locus standi* and the invitation that the judge may extend to a putative respondent to be heard at the leave stage, it is now appropriate for us to decide whether other parties or persons may be heard at the threshold stage in opposition to the application for judicial review. Order 53 r. 8(1) may throw some light on this. It reads:

> Other persons who may be heard (O. 53 r. 8)
>
> 8. (1) Upon the hearing of an *application for judicial review*, any person who desires to be heard in opposition to the application and appears to the judge to be a proper person to be heard may be heard notwithstanding that he has not been served with the cause papers in the matter.

[23] In *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2009] 6 CLJ 405; [2009] 6 MLJ 307 FC, Zulkefli FCJ explained at p. 319 [26] that a proper person or party who has a direct interest may be joined as a party. The well-considered judgment of His Lordship refers to the "joinder as a party in judicial review" proceedings. However, *the parties before the Federal Court did not address the question of whether the "judicial review" proceedings refer to the two stages or to one stage only ie, either the threshold stage or the substantive stage.*

[24] Hence, it is our bounden duty to provide an answer. In our view, the resolution thereto depends on the true construction to be placed on the expression "application for judicial review" in O. 53 r. 8(1). The precise meaning of this expression may be crystallised by a careful consideration of the word "application". This word is to be construed by reference to the maxim *noscitur a sociis* and in such a manner as to take colour and precision from the context in which it appears or is used in O. 53. It is or will be known from its associates.

[25] First of all, it is noteworthy that O. 53 is captioned "application for judicial review". The word "application" in this caption would cumulatively cover the two stages *ie*, the leave application at the threshold stage as well as the substantive stage after leave has been granted. Similarly, the expression "an application for judicial review" in O. 53 r. 8(1) and (2) would also include the two stages which are the essential characteristics prevailing in an application for judicial review. Leave at the threshold stage is a *sine qua non* to the judicial review proceedings, as the absence of leave would inevitably render the particular judicial review proceedings incomplete and inchoate.

By no stretch of imagination can the essential requirement for leave be jettisoned or truncated to leapfrog to the substantive motion. In our view, the submission presented for ASC that leave may be granted to ACE to intervene at the substantive application for judicial review should also apply equally to the threshold stage as well. *There is no plausible reason to*

exclude a proper party or person to be granted leave to intervene as a respondent at the leave stage. In such circumstances, *inclusivity rather than exclusivity should be the norm, so as to ensure fairness to the party who has a direct interest in the matter*. (I am grateful to my learned brother Mohamed Apandi bin Ali JCA for this input).

[26] In addition, *O. 53 r. 8(1) confers upon the judge a wide discretion to hear a proper party or person in opposition to an "application for judicial review" so long as the conditions contained therein have been fulfilled*, *viz*:

(1) *the person desires to be heard in opposition to the application*;

and

(2) that person appears to the judge to be a *proper person to be heard*, notwithstanding that he has not been served with the cause papers in the matter.

[27] In the instant appeal, so long as the judge has demonstrated a proper exercise of discretion under O. 53 r. 8(1), on the basis of the facts and circumstances prevailing in each particular case, and established judicial principles, this court would be slow in embarking on an appellate interference.

[28] It is singularly significant that the second respondent was the recipient of the MOF approval which is now being challenged by way of judicial review. The *second respondent is directly involved in the MOF approval and will be directly affected by the outcome of the judicial review proceedings*. The *second respondent clearly has a direct interest in the outcome of ASC's application for leave at the threshold stage, and so ought to be added as a party to the proceedings*. In the context herein, *justice and fairness dictate the necessary inclusion of the second respondent as a party to canvass their opposition on a subject matter directly affecting their interest*. (I am grateful to my learned brother Syed Ahmad Helmy bin Syed Ahmad for his input). O. 53 r. 8(1) can therefore be invoked to allow the second respondent to appear as a proper party to oppose ASC's application at the leave stage. We are of the view that the learned High Court judge has correctly exercised the discretion under O. 53 r. 8(1). We are therefore unable to sustain the submission advanced for ASC. (emphasis added)

[68] In the present appeal, it was argued that the judicial review was intrinsically intertwined with Suit 152 and that the Association had in its pleadings in JR 198, made copious reference to Suit 152 and even moved the High Court for an urgent hearing of the judicial review as they wanted to procure an outcome in the judicial review so that this may be used to bolster their position in the defence of Suit 152.

[69] We turn now to the statement filed pursuant to O. 53 r. 3(2) of the ROC to show the causal connection between Suit 152 and JR 198. The relevant paragraphs read as follows:

A Statement - Order 53 r. 3(2)

6. Pada 22.3.2017, seorang pemilik rumah di Taman Bangsar tersebut bernama Ranjan Paramalingam dan penyewanya telah memfailkan saman (WA-22NCVC-152-03/2017) terhadap Pemohon (sebagai Defendan) memohon pelbagai relif yang terkandung dalam Pernyataan Tuntutan terpinda mereka ('Saman dan Penyataan Tuntutan terpinda oleh Ranjan Paramalingam') antaranya "suatu deklarasi bahawa Defendan telah mengendalikan suatu perniagaan keselamatan haram dalam Kawasan keselamatan yang salah di sisi undang-undang".

7. Pada 4.7.2017, Pemohon memfailkan Pernyataan Pembelaan awal mereka yang kemudiannya dipinda (Pernyataan Pembelaan terpinda) yang mendakwa bahawa, antara lain, pembelaan kuasa statutori (defence of statutory authority), yang mana Responden telah memberikan Pemohon kelulusan yang diperlukan dan relevan untuk melaksanakan skim GN, dan Pemohon tidak akan mengoperasikan skim GN kecuali dengan kebenaran-kebenaran yang diberikan oleh Responden.

8. Pada 18.7.2017, Ranjan Paramalingam menjawab dalam Pernyataan Balasan mereka yang kemudiannya dipinda sebagai balasan kepada Pernyataan Pembelaan terpinda, iaitu pada dasarnya, bahawa Pemohon gagal mematuhi syarat-syarat Responden. Tambahan itu, Ranjan Paramalingam tidak berpuas hati dengan terma dan syarat yang dikenakan oleh Responden kepada Pemohon dalam melaksanakan projeknya dan menyatakan bahawa ia adalah tidak munasabah dan telah menyalahi undang-undang.

...

10. Pada 31.7.2019, Yang Arif Mahkamah Tinggi telah membenarkan permohonan Pemohon untuk menarik DBKL sebagai Pihak Ketiga dalam Prosiding Pihak Ketiga ('Prosiding Pihak Ketiga'). Tindakan ini diambil lanjutan daripada Saman dan Penyataan Tuntutan terpinda oleh Ranjan Paramalingam dan Penyataan Balasan terpinda mereka yang mencabar punca kuasa Responden berkaitan skim GN tersebut.

11. Pada 6.1.2020 juga, Yang Arif Mahkamah Tinggi membenarkan permohonan Pemohon menarik Responden pula sebagai Pihak Ketiga Ke-2 dan telah menolak permohonan Responden mengenepikan Prosiding Pihak Ketiga kerana terdapat isu-isu yang perlu dibicarakan.

...

13. Pada 20.5.2020, sewaktu pengurusan kes saman WA-22NCVC-152-03/2017, Yang Arif Mahkamah Tinggi telah mengarahkan peguamcara Responden memberikan maklumbalas sama ada Responden telah mengisukan kebenaran tempoh percubaan atau tidak kepada Pemohon walaupun selepas Kerajaan Malaysia mengisukan Perintah Kawalan Pergerakan Bersyarat sekitar 4.5.2020.

14. Pada 1.6.2020, selepas diarahkan oleh Yang Arif Mahkamah Tinggi, peguamcara Responden telah mengisukan surat kepada pihak-pihak bahawa Responden tidak akan melanjutkan tempoh kebenaran dan

kelulusan kepada skim GN atas alasan terdapat tuntutan di Mahkamah oleh Pemohon terhadap Responden sebagai Pihak-pihak Ketiga ('Keputusan Responden'). Kandungan Keputusan Responden adalah seperti berikut:

> Dimaklumkan bahawa kami telah mendapat arahan dari anakguam kami untuk memaklumkan kepada pihak Yang Arif Hakim bahawa Pihak-pihak Ketiga tidak akan melanjutkan tempoh kebenaran dan kelulusan kepada Skim "Guarded Neighbourhood" tersebut **memandangkan terdapat tuntutan di Mahkamah oleh pihak Defendan terhadap Pihak-pihak Ketiga**.

15. Pada 8.6.2020, Pemohon telah mengarahkan peguamcaranya untuk mengisukan satu surat sebagai rayuan kepada Responden untuk mempertimbangkan semula Keputusan Responden tersebut dan juga Permohonan Pemohon tersebut ('surat peguamcara Pemohon bertarikh 8.6.2020') terutamanya apabila Responden tiada langsung memberi amaran awal atau mengadakan sebarang perbincangan langsung dengan Pemohon.

16. Pada 23.6.2020, peguamcara Responden telah mengisukan surat mereka kepada peguamcara Pemohon mengepilkan surat keputusan Responden terhadap rayuan Pemohon bertarikh 22.6.2020 ('Keputusan Rayuan'). Keputusan Rayuan tersebut telah menolak rayuan Pemohon tersebut atas alasan berikut.

16.1. Pertama, terdapat aduan yang diterima oleh Jabatan;

16.2. Kedua, terdapat kes yang telah difailkan terhadap Responden oleh Pemohon:

16.3. Ketiga, terdapat ketidakpatuhan syarat-syarat dalam skim GN tersebut oleh Pemohon. (emphasis added)

[70] It is also material to note that at para. 18 of the O. 53 statement, the Association implored upon the High Court to expedite the judicial review as the outcome of the same would serve to influence the outcome of Suit 152. Thus, the Association said:

Isu Sijil Perakuan Segera

18. Terdapat keperluan untuk Mahkamah yang mulia Permohonan Semakan ini dengan segera kerana:

18.1. Pertama, bagi saman WA-22NCVC-152-03/2017, pengurusan kes telah ditetapkan pada 27.7.2020 dan perbicaraan kes pula pada 26.8.2020 dan pada 7 hingga 9.9.2020. Kes ini harus didengari sebelum tarikh perbicaraan (sekiranya dibenarkan sebelum pengurusan kes bagi saman tersebut) kerana sebarang keputusan Permohonan Semakan Kehakiman ini akan menentukan hala tuju perbicaraan saman tersebut.

18.2. Kedua, isu kebenaran Responden dalam kes ini merupakan isu teramat penting untuk diputuskan sebelum perbicaraan saman tersebut kerana jika Keputusan Responden dan Keputusan Rayuan tersebut adalah salah dari segi undang-undang dan dibatalkan, segala operasi skim

A GN dijalankan oleh Pemohon adalah menurut undang-undang dan Pemohon akan terlindung daripada tindakan Ranjan Paramalingam dan penyewanya.

18.3. Ketiga, sekiranya Permohonan Semakan Kehakiman ini didengari lebih awal daripada perbicaraan saman tersebut, ia akan mengelakkan
B terdapat dua prosiding bagi kes yang pihak-pihaknya adalah sama daripada berjalan serentak. Ia boleh menyebabkan kesulitan kepada pihak-pihak dan menyukarkan perbicaraan (terutamanya dapatan fakta yang perlu dibuat oleh Mahkamah Tinggi dalam saman tersebut) berjalan.

[71] It is also relevant to note that in JR 198, the Association complained
C that DBKL had delayed in responding to their appeal for reconsideration of their application for approval to carry on with the G&G scheme. The Association then alluded to the fact that the appellants had in fact capitalised on DBKL's refusal to grant approval. Thus, at para. 19.4 of the O. 53 statement, the Association pleaded that:

D 19.4 Keempat, akibat kelewatan Respondent di atas dan hanya baru memutuskan Keputusan Rayuan tersebut, Ranjan Paramalingam dan penyewanya telah menuduh bahawa Pemohon mengoperasikan skim GN secara haram pada 11.3.2020 hingga 1.6.2020.

[72] Thus, in so far as the present appeal is concerned, although Suit 152
E was dismissed by the High Court and the decision was upheld by the Court of Appeal, the matter is presently pending hearing of the substantive appeal in the Federal Court in respect of the questions for which leave was granted. What is relevant is that the appellants, had at all times opposed the G&G scheme and had complained that they were hindered in terms of egress and
F ingress to the side road/back-lane and generally to that part of Bangsar Park covered by the G&G scheme, and sought to intervene in the judicial review proceedings, whereby the Association was seeking to review the decision of DBKL to reject its G&G scheme.

[73] However, the judge dismissed the application to intervene, essentially
G because Suit 152 was dismissed. We do not agree that encl. 30 is devoid of merit merely because of the outcome of Suit 152.

[74] It is clear from the case of *MAIS v. Bong* that for a party to intervene in judicial review proceedings, the interested party must establish that their interest is directly affected by the decision under review. And in order to be
H a "proper person" to be heard in opposition to the judicial review, that party must satisfy the court that they are directly affected by the judicial review. We are of the considered opinion that since part of the house (side road and back-lane) is subject to the G&G scheme (with all its strictures and security protocols *etc*), which is the subject matter of JR 198, any decision on the
I G&G scheme which favours the Association will invariably directly affect the appellants who will be compelled to abide by the rules of the G&G scheme if they wished to gain access to the side road and back-lane to the house.

[75] In our view, since the Association had themselves wrapped their O. 53 statement around the allegations that were made in Suit 152, there is a causal connections or inter-relationship between Suit 152 and JR 198, which cannot be surgically separated to the point where it can be said rather artificially that the appellants are not directly affected by JR 198.

[76] We would go further and state that it is a plain and indeed quite obvious, that as parties who are pathologically opposed to the G&G scheme, regardless of the outcome of Suit 152, the appellants would be directly affected by JR 198 and any outcome thereunder which favours the Association.

[77] In order to underscore the point in relation to the appellants being directly affected by JR 198, we think that it would be helpful if we were to refer to some of the cases where intervention has been allowed in judicial review proceedings. Thus, we took the liberty of extracting the following cases which were referred by the learned author, Mr Gregory Das in his well-researched book, "*The Law And Practice Of Judicial Review In Malaysia*" (CLJ Publication) (2020) (at pp. 639 to 642):

(i) *Ramachandram Appalanaidu & Ors v. Gasing Meridian Sdn Bhd* [2018] 8 CLJ 48 (CA), where a developer was allowed to intervene in a judicial review challenge against the grant of planning permission for a development that involved the developer;

(ii) *Mentari Housing Development Sdn Bhd & Anor v. Abdul Ghapor Hussin & Ors* [2012] 2 CLJ 199 (CA), where the purchasers of apartments and the Selangor State Authority were allowed to intervene in a judicial review against the planning permission granted by the Municipal Council of Petaling Jaya for a proposed development;

(iii) *Semantan Estate (1952) Sdn Bhd v. Kerajaan Malaysia & Ors* [2019] 1 LNS 1557 (HC), where the majority shareholder of a company was allowed to intervene in a judicial review to challenge the acquisition of land by the Government of Malaysia in which the company had a beneficial interest;

(iv) *Chin Chee Kow v. Peguam Negara Malaysia; So Miau Song Ors (Intervener)* [2018] 1 LNS 94 (HC), where the existing trustees of a trust were allowed to intervene in a judicial review against the Attorney General's refusal to consent under s. 9 of the Government Proceedings Act 1956 for a third party to be made new trustees. The decision to allow intervention was made on account of the proposed interveners having a direct interest in the proceedings "as they are directly involved in the administration of the trust making them proper persons ...".

A (v) *Tenaga Nasional Bhd v. Suruhanjaya Tenaga & Anor* [2017] 1 LNS 902 (HC), where YTL Corporation Berhad was allowed to intervene in a judicial review challenge by Tenaga Nasional Berhad against the Energy Commission's decision to compel the execution of an agreement between Tenaga Nasional Berhad and the proposed interveners in view
B of the "direct involvement and interest" of YTL Corporation Berhad in the agreement;

(vi) *Dr Dzul Khaini Hj Husain & Ors v. Director Of Lands And Mines Office (Kuala Lumpur) & Anor; Mass Rapid Transit Corporation Sdn Bhd (Proposed Intervener)* [2016] 9 CLJ 836 (HC), where an application by Mass Rapid
C Transit Corporation Sdn Bhd ('MRT') to intervene in a challenge against the acquisition of land for the construction of the Mass Rapid Transit project was allowed as MRT was recognised as "the entity to undertake, develop and own the MRT project" and therefore "any decision made on the legality of the intended compulsory acquisition of the parcels in
D the said land ... would directly fetter the proposed intervener's right to undertake the MRT project";

(vii) *Wahi Saidin & Ors v. Yang Dipertua Majlis Perbandaran Kulim & Ors* [2013] 5 CLJ 548 (HC), where the registered proprietor of land on which a Chinese cemetery was to be constructed was allowed to intervene in a
E judicial review to challenge the grant of the approval of the construction as the proprietor was held to be directly affected by the outcome of the judicial review.

[78] What can be elicited from the cases mentioned above is that the question of whether the proposed intervener is directly affected by the
F judicial review is fact-sensitive. Hence, it is incumbent upon the court to scrutinise the facts carefully and to keep in mind that all parties who may be directly affected must be allowed to intervene and participate in the judicial review so that they can be heard in opposition to the views being advanced by the Association as the protagonist of the judicial review. As
G stated by Justice Low Hop Bing (JCA) in *Advance Synergy Capital* (*supra*):

> 25 ... There is no plausible reason to exclude a proper party or person to be granted leave to intervene as a respondent at the leave stage. In such circumstances, **inclusivity rather than exclusivity should be the norm, so as to ensure fairness to the party who has a direct interest in the matter**.
>
> (emphasis added)

H

[79] Hence, in light of the appellants' opposition to the G&G scheme, and the physical proximity of the house to the G&G scheme, it is only just, fair and expedient that they, as persons who will be directly affected by JR 198, be allowed to intervene in the judicial review proceedings.

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[80] The final point we wish to make is that the circumstances here were such that the appellants had no choice but to intervene in JR 198. Indeed, they had asked that the papers be served on them. However, the Association refused. The Association went ahead and obtained leave to commence judicial review.

[81] In these circumstances, if the appellants had decided not to intervene in JR 198, the respondents here will surely be entitled to say that by their inaction, the appellants have "acquiesced" to JR 198 and "estopped" from taking a stand which is contrary to the outcome in JR 198. The legal position in this regard is quite trite and the principles may be gathered from the following cases:

(i) *Tradium Sdn Bhd v. Zain Azahari Zainal Abidin & Anor* [1996] 2 CLJ 270; [1995] 1 MLJ (CA).

(ii) *Nana Ofori Atta II v. Nana Abu Bonsra II* [1958] AC 95; [1957] 3 All ER 559; [1957] 3 WLR 830 (Privy Council).

[82] In the premises, we are satisfied that for the reasons discussed and articulated above, there was a misdirection on the part of the judge in dismissing encl. 30.

[83] As such, we allowed the appeal and set aside the decision of the judge and made an order that the appellants be allowed to intervene in the judicial review proceedings and be joined as the respondents to JR 198. Accordingly, we granted order in terms of encl. 30 with costs to be in the cause.

Order accordingly.